



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



320294

446 0-6-20971

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

General Manager
Engelhard Corporation
on behalf of Harshaw Chemical Company
120 Pine Street
Elyria, Ohio 44035

Re: Request for Information Pursuant to Section 104 of CERCLA
for Chemical Recovery Systems, Inc., in Elyria, Ohio

Dear Sir or Madam:

U.S. Environmental Protection Agency (U.S. EPA or Agency) is investigating the Chemical Recovery Systems Site (the Site) in Elyria, Ohio. This Site is located at 142 Locust Street, Elyria, Ohio. U.S. EPA believes that you may have information that is relevant to the investigation of contamination at the Site. Enclosure 1 is a summary of the history of this Site, an action taken under the Resource Conservation and Recovery Act (RCRA), and the results of U.S. EPA's investigation.

U.S. EPA asks that you provide information and documents relating to the contamination of the Site. Please respond completely and truthfully to this Information Request and its questions in Enclosure 2 within 30 days of your receipt of this letter. Instructions for completion of this response are in Enclosure 3; definitions of terms used in this Information Request and its questions are in Enclosure 4.

You may consider some information that we request as confidential. If you wish to assert a privilege of business confidentiality, you must respond to the question and advise U.S. EPA that you request that the Agency treat the response as confidential business information. Directions to assert a claim of business confidentiality are in Enclosure 5.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, commonly referred to as CERCLA or Superfund, gives U.S. EPA the authority to: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by a site, and 3) clean up those sites.

Under Section 104(e)(2) of CERCLA, U.S. EPA has authority to gather information and to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility;
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;
- C. The ability to pay the costs of the clean up.

Enclosure 6 is a summary of this legal authority. Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA, as amended. Failure to respond and/or failure to justify the non-response can result in similar penalties under this Section. Further, Section 104(e)(5) authorizes the United States to seek penalties from a Federal Court of up to \$27,500 for each day of continued noncompliance. U.S. EPA considers noncompliance to be not only failure to respond to the Information Request, but also failure to respond completely and truthfully to each question in the Information Request.

The provision of false, fictitious or fraudulent statements or misrepresentations may subject you or your firm to criminal penalties of up to \$27,500 or up to five years imprisonment, or both, under 18 U.S.C. § 1001.

U.S. EPA has the authority to use the information requested in an administrative, civil, or criminal action.

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

Return your response to U.S. EPA within 30 days of your receipt of this Information Request. Mail your response to:

Attn: Margaret Herring
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 W. Jackson Boulevard, Mail Code SR-6J
Chicago, Illinois 60604

If you have questions about a legal matter please call Thomas Nash, Associate Regional Counsel, at 312 886-0552. Address technical questions to Gwendolyn Massenburg, Remedial Project Manager, at 312 886-0983. Address all other questions to Margaret Herring, Civil Investigator, at 312 886-6239.

We appreciate your effort to respond fully and promptly to this information request.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy L. Carney". The signature is fluid and cursive, with a large, sweeping "W" and "C".

Wendy L. Carney, Chief
Remedial Response Branch #1

Enclosures: 1. Site History
2. Questions
3. Instructions
4. Definitions
5. Confidential Business Information
6. Description of Legal Authority

cc: Arthur Dornbusch, Vice-President, General Counsel, & Secretary
Engelhard Corporation

Enclosure One

SITE HISTORY

The Chemical Recovery Systems Site (CRS Site) is located at 142 Locust Street in Elyria, Ohio.

The CRS Site is bordered on the west by the East Branch of the Black River, to the north and east by the Engelhard (formerly Harshaw) Chemical Company, and to the south by M&M Aluminum Siding Company. The CRS Site is located in a predominantly industrial and commercial area near the central business district of Elyria. The CRS Site consists of a four acre parcel that is currently leased to M&M Aluminum which uses the Site property to store aluminum siding. Most of the four acre parcel is empty. Two buildings are currently on the CRS Site: a former warehouse and office building and the masonry shell of a building that housed a Rodney Hunt still. These buildings are located in the southeast corner of the CRS Site. The foundation of a building that housed a Brighton still is located in the northeast corner of the CRS Site. The Site is fenced on all sides except the side bounded by the East Branch of the Black River.

Beginning no later than the 1940s the CRS Site was used for commercial and industrial purposes such as a coal yard. During the 1950s, Harshaw Chemical briefly leased the CRS Site to store saggars. In 1960, Russell Obitts leased the CRS Site property and relocated his existing business, the Obitts Chemical Company, which reclaimed spent organic solvents, to the CRS Site property. Later Russell Obitts and Dorothy Obitts purchased this property.

In 1974, Chemical Recovery Systems, Inc., a Michigan corporation (CRS, Inc., - MI), assumed operations at the CRS Site through a stock purchase agreement with the Obitts Chemical Company. In a separate agreement CRS, Inc., - MI leased the CRS Site property from Russell Obitts and Dorothy Obitts in a lease agreement with an option to purchase. A year later CRS, Inc., - MI exercised its purchase option. CRS, Inc., - MI continued operations at the CRS Site until 1981.

Operating as Obitts Chemical Company and then as CRS, Inc., - MI the facility located on the Site received spent organic solvents from industrial facilities and reclaimed the solvents through distillation processes. Both operators hauled contaminated solvents to the Site facility by their own tanker trucks and stake trucks hauling 55 gallon drums. Spent solvents were stored in above ground tanks and 55 gallon drums. Soil contamination occurred through leakage and spills. Spent solvents that were transported to the CRS Site include, but are not limited to, the following: acetone, hexane, isopropyl alcohol, methylene ethyl ketone (MEK), tetrachloroethane, toluene, trichloroethane, and xylene. Analysis of samples that U.S. Environmental Protection Agency ("U.S. EPA") collected on November 26, 1979, at the CRS Site detected PCE, ethyl benzene, and naphthalene. A solvent sample collected on February 5, 1980 contained toluene,

Enclosure 1: Site History

Site: Chemical Recovery Systems, Inc., Elyria, Ohio

ethyl benzene, xylene, and naphthalene. During a visit on February 5, 1980, by U.S. EPA to the CRS Site an employee of the facility identified specific solvents reclaimed as well as paint solvents generally.

Because the CRS Site posed imminent danger to the local population and the environment, U.S. EPA initiated an action under the Resource Recovery and Conservation Act (RCRA). On October 7, 1980, the U.S. Department of Justice (U.S. DOJ), on behalf of U.S. EPA, filed an action against CRS, Inc., - MI in the U.S. District Court, Northern District of Ohio, to abate an imminent and substantial endangerment to public health and the environment from the CRS Site. On July 12, 1983, The District Court entered a Consent Decree that required CRS, Inc., - MI to take these and other actions: excavate all visibly contaminated soils identified during a joint U.S. EPA and CRS, Inc., - MI inspection; excavate the perimeter of the Brighton still to a specified depth and distance; dispose of the excavated soil at an approved waste disposal site; backfill the excavated areas; and grade the CRS Site. After its inspection of the CRS Site November 7, 1983, U.S. EPA concluded that CRS, Inc., - MI was in compliance with the July 12, 1983 Consent Decree.

Because hazardous substances released at the CRS-Site remain in the soil and groundwater at elevated levels, U.S. EPA is now taking response actions, under the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and its amendments. These actions address potential risk to human health and the environment at the CRS Site.

Enclosure Two

QUESTIONS

I. Background Information

1. Identify all persons consulted in the preparation of the answers to these questions.
2. Identify all documents consulted, examined, or referral to in the preparation of the answers to these questions and provide copies of all such documents.
3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question or who may be able to provide additional responsive documents, identify such persons.
4. List the EPA Identification Numbers of the Respondent.
5. Identify the acts or omissions of any person, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants and damages resulting therefrom.

II Dealings with Obitts Chemical Company and Successor Firms

1. Identify all persons including respondent's employees, who have knowledge or information about the generation, use, treatment, storage, disposal or other handling of material at or transportation of materials to the Site (operating as Obitts Chemical Company or Chemical Recovery Systems, Inc., at 142 Locust Street, Elyria, Ohio).
2. Describe all arrangements that Respondent may have or may have had with each of the following companies and persons:
 - a) Obitts Chemical Company
 - b) Russell Obitts
 - c) Chemical Recovery Systems, Inc.
 - d) Peter Shagena
 - e) James Freeman
 - f) James "Jim" Jackson
 - g) Donald Matthews
 - h) Bob Spears

Enclosure 2: Questions

Site: Chemical Recovery Systems, Inc., Elyria, Ohio

- i) Bill Bromley
- j) Nolwood Chemical Company, Inc.
- k) Art McWood
- l) Chuck Nolton
- m) Michigan Recovery System, Inc.
- n) Chemical Recovery Systems – a Michigan

8. Set forth the dates during which the Respondent engaged in any of the following activities:

- a) generation of hazardous materials that were sent to the CRS Site;
- b) transportation of any material to the CRS Site.

3. Identify all persons, including yourself, who may have arranged for disposal or treatment, or arranged for transportation for disposal or treatment, of waste materials, including hazardous substances, at the CRS Site. In addition, identify the following:

- a) The persons with whom you or such other persons made such arrangements;
- b) Every date on which such arrangements took place;
- c) For each transaction, the nature of the waste material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid), and the process for which the substance was used or the process which generated the substance;
- d) The owner of the waste materials or hazardous substances so accepted or transported;
- e) The quantity of the waste materials or hazardous substances involved (weight or volume) in each transaction and the total quantity for all transactions;
- f) All tests, analyses, and analytical results concerning the waste materials;
- g) The persons(s) who selected the Site as the place to which the waste materials or hazardous substances were to be transported;

Enclosure 2: Questions

Site: Chemical Recovery Systems, Inc., Elyria, Ohio

h) The amount paid in connection with each transaction, the method of payment, and the identity of the person from whom payment was received;

i) Where the person identified in g., above, intended to have such hazardous substances or waste materials transported and all evidence of this intent;

j) Whether the waste materials or hazardous substances involved in each transaction were transshipped through, or were stored or held at, any intermediate site prior to final treatment or disposal;

k) What was actually done to the waste materials or hazardous substances once they were brought to the Site;

l) The final disposition of each of the waste materials or hazardous substances involved in such transactions;

m) The measures taken by you to determine the actual methods, means, and site of treatment or disposal of the waste material and hazardous substance involved in each transaction.

n) The type and number of containers in which the waste materials or hazardous substances were contained when they were accepted for transport, and subsequently until they were deposited at the Site, and all markings on such containers;

o) The price paid for (i) transport, (ii) disposal, or (iii) both of each waste material and hazardous substance.

p) All documents containing information responsive to a - o above, or in lieu of identification of all relevant documents, provide copies of all such documents.

q) All persons with knowledge, information, documents responsive to a - p above.

4. Identify all liability insurance policies held by Respondent from 1960 to the present. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, nonsudden, or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.

5. Provide copies of all income tax returns, including all supporting schedules, sent to the Federal Internal Revenue Service in the last five years.

Enclosure 2: Questions

Site: Chemical Recovery Systems, Inc., Elyria, Ohio

6. If Respondent is a Corporation, respond to the following requests:

- a) Provide a copy of the Articles of Incorporation and By-Laws of the Respondent.
- b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to those filed with the Internal Revenue Service and Securities and Exchange Commission.
- c) Identify all of Respondent's current assets and liabilities and the person who currently own or are responsible for such assets and liabilities.
- d) Identify the Parent Corporation and all Subsidiaries of the Respondent.

III Manufacturing Processes of Harshaw Chemical

1. Describe the manufacturing processes used and products produced at the Elyria, Ohio facility of Harshaw Chemical, now Engelhard Chemical Corporation, and any predecessor of Harshaw Chemical at this location from inception of activity until the present.

Include:

- a) the families or types of products produced;
- b) the inclusive dates during which each family or type of products were produced;
- c) a description of the manufacturing process(es) used in the production of each of the families or types of products that are identified in response to III.1.a.
- d) the methods used to clean equipment following the fabrication of the products identified in response to III.1.a. Identify the solvents and volatile chemicals used in these cleaning methods.
- e) the means and methods used in the disposal of the contaminated products used in the cleaning processes described in III.1.d. Identify waste haulers and the places of disposal.

2. During its operation at the Elyria location, did Harshaw Chemical, any predecessor, or its successor produce: paints, lacquers, coatings, or dry product whose ultimate use would be in a paint, lacquer, or coating? If other than an unequivocal no, answer the following:

- a) the product by generic and trade name;
- b) the period(s) of its production

Enclosure 2: Questions

Site: Chemical Recovery Systems, Inc., Elyria, Ohio

c) any heavy metal used in the fabrication of the product.

3. Throughout the period of operation of the Elyria facility was any of the following chemicals and metals used in production or operation of the facility?

Chemicals: PCE, Naphthalene, Benzo(a)anthracene, Benzo(k)fluoranthene, Benzo(a)pyrene, Indeno(1,2,3-cd)pyrene, Tetrachloroethylene, and solvents including, but not limited to, xylene, toluene, chloroform, ethyl benzene.

Metals: Arsenic, Barium, Cadmium, Lead, Manganese, Nickel, Antimony, Beryllium, Cobalt, Copper, Zinc, Mercury, Selenium.

If your response is other than an unequivocal no, answer the following for each item used:

a) how used;

b) periods of use;

c) quantity used per calendar period (month, quarter, or year).

4. As Harshaw operated in the present location and acquired additional adjacent properties, did Harshaw petition the City of Elyria to vacate streets, alleys, or close water mains, waste water sewers, or storm water sewers? If yes provide specific information about each instance of vacation or closure.

5. Identify areas or structures of the Harshaw facility in which chemicals were stored including, but not limited to, outdoor drum storage areas, underground storage tanks. For each such area and structure describe:

a) describe the location of the storage area or structure;

b) the period of time during which the area or structure was used for storage;

c) the kinds of chemicals stored in that area or structure.

Enclosure Three

INSTRUCTIONS

1. Answer each of the questions in this Information Request separately.
2. Precede each answer with the number of the question to which it corresponds.
3. In answering each question, identify all persons and contributing sources of information.
4. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
5. For any document submitted in response to a question, indicate the number of the question to which it responds.
6. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.
7. Your response should be accompanied by a notarized affidavit from a responsible company official or representative which states that a diligent record search has been completed, and that there has been a diligent interviewing process with all present and former employees who may have knowledge of your operations, use of hazardous substances, any releases or spills, and any storage, treatment, disposal or handling practices. To the extent that any information you provide is based on your personal knowledge, or the personal knowledge of your employees, agents, or their representatives, this information shall be in the form of a notarized affidavit. In lieu of a notarized affidavit, you may submit the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

8. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
9. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Enclosure 5.

Enclosure Four

DEFINITIONS

1. As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.
2. The term **person** as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. **The Site** referenced in these documents shall mean the **Chemical Recovery Systems, Inc., Site** located at 142 Locust Street, Elyria, Ohio.
4. The term **hazardous substance** shall have the same definition as that contained in Section 101(14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products.
5. The term, **pollutant** or **contaminant**, shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
6. The term **release** shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.
7. The term **identify** means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
8. The term **identify** means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g. corporation, partnership), organization, if any, and a brief description of its business.
9. The term **identify** means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.
10. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, Resource Conservation and Recovery Act (RCRA), 40 CFR Part 300 or 40 CFR Parts 260-280, in which case the statutory or regulatory definitions shall apply.

Enclosure Five

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U.S. EPA or Agency) is requesting. You can not withhold information or records upon that basis. The Regulations at 40 C.F.R. Part 2, Section 200 *et seq.*, require that the U.S. EPA afford you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. Section 2.203(b). Information covered by such a claim will be disclosed by the U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. [See 41 Federal Register 36902 *et seq.* (September 1, 1976); 43 Federal Register 4000 *et seq.* (December 18, 1985).] If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7) (ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish U.S. EPA to treat the information or record as *confidential*, you must advise U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a **separate** assertion of confidentiality for **each response and each document** that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope *confidential*, and identify the number of the question to which the envelope's contents are the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;
2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether U.S. EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination.

Enclosure 5: Confidential Business Information
Site: Chemical Recovery Systems, Inc., Elyria, Ohio

5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information.
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(i). If you make this assertion, explain how the disclosure would tend to lessen the ability of U.S. EPA to obtain similar information in the future.
7. Any other information that you deem relevant to a determination of confidentiality.

Please note that, pursuant to 40 C.F.R. 2.208(e), **the burden of substantiating confidentiality rests with you.** The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If you do not identify this information and documents as *confidential*, your comments will be available to the public without further notice to you.

Enclosure Six

DESCRIPTION of LEGAL AUTHORITY

The federal **Superfund** law (the Comprehensive Environmental Response, Compensation and Liability Act), 42 U.S.C. § 9601, *et seq.*, (commonly referred to as **CERCLA** or Superfund), gives the U.S. EPA the authority to, among other things: 1) assess contaminated sites; 2) determine the threats to human health and the environment posed by each site; and 3) clean up those sites in the order of the relative threats posed by each.

Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604 (e)(2), U.S. EPA has broad information-gathering authority which allows U.S. EPA to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility;
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;
- C. The ability to pay the costs of the clean-up.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA. This section also authorizes an enforcement action with similar penalties if the recipient of the Request does not respond and does not justify the failure to respond. Other statutory provisions (18 U.S.C. Section 1001) authorize separate penalties if the responses contain false, fictitious, or fraudulent statements. U.S. EPA has the authority to use the information requested in this Information Request in an administrative, civil, or criminal action.